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TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
DI-5717

In Re: Application Of: **Watkins et al.**

Serial No.
09/871,863

Filing Date
June 1, 2001

Examiner
K. Menon

Group Art Unit
1723

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Title: **HEMODIALYZER HEADERS**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Appellants' Reply Brief (4 pgs.) (triplicate); and Return receipt postcard.

in the above identified application.

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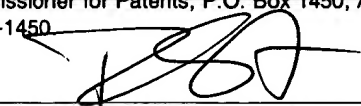


Signature

Dated: **May 10, 2004**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Watkins et al.
Appl. No.: 09/871,863
Conf. No.: 1448
Filed: June 1, 2001
Title: HEMODIALYZER HEADERS
Art Unit: 1723
Examiner: K. Menon
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Commissioner for Patents
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APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to Examiner's Answer dated March 10, 2004 pursuant to 37 C.F.R. § 1.193(b)(1). Appellants respectively submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated June 26, 2003 as noted in Appellants' Appeal Brief filed on January 26, 2004 ("Appeal Brief") for the reasons set forth below. Accordingly, Appellants respectively request that the rejection of pending claims 1 and 3-28 under 35 U.S.C. § 102 or, in the alternative, under 35 U.S.C. § 103 be reversed.

II. THE CLAIMS DO NOT STAND OR FALL TOGETHER

Appellants believe that claims 1 and 3-28 do not stand or fall together contrary to the Patent Office's position. See, Examiner's Answer, page 2. Indeed, each of the independent claims 1, 12 and 21 recite differently claimed subject matter that are separately distinguished from the cited art as disclosed in Appellants' Appeal Brief. For example, in the argument section of the Appeal Brief on pages 9 and 10, each of the independent claims is separately described. Further, in response to the anticipation rejection and alternative obviousness rejection, the subject matter as defined by each of the independent claims is separately defined and distinguished against the cited art. For example, Appellants have argued for the separate

patentability of each of the independent claims under separately defined subheadings as disclosed on pages 16-18 of Appellants' Appeal Brief.

Moreover, Appellants have also argued for the separate patentability of some dependent claims where specified in the Appeal Brief. More specifically, the dependent claims that are separately asserted are disclosed in the argument section under the subheading "B. The Claimed Invention--Dependent Claims" as disclosed on page 10 of Appellants' Appeal Brief. Appellants further asserted the separate patentability for each of these dependent claims in Appellants' Appeal Brief on pages 16-18.

In view of same, this clearly demonstrates Appellants intent to argue for the separate patentability, at a minimum, of each of the independent claims. Indeed, Appellants have continued to argue in this way in response to the Examiner's Answer as provided below. Moreover, Appellants believe that they have provided arguments in sufficient detail to assert the separate patentability for some of the dependent claims as specified in Appellants' Appeal Brief and further specified below. Therefore, Appellants believe that the Patent Office's statement that the alleged two groupings of claims stand or fall together is both improper and unfair.

III. DE3435883 FAILS TO DISCLOSE OR SUGGEST THE CLAIMED INVENTION

Appellants believe that DE3435883 fails to disclose or suggest the claimed invention. Clearly, the cited art provides a dialyzer and header thereof that is both structurally and functionally different than the claimed invention. For example, independent claim 1 recites a dialyzer inlet header that includes, in part, a member for modifying the fluid flow path wherein the member includes a curved vane extending from a portion of the body; independent claim 12 recites a dialyzer that includes, in part, a member located in juxtaposition and integral to the blood inlet of the dialyzer that causes blood to flow to a perimeter region of a first end of a fiber bundle; and independent claim 21 recites a dialyzer header that includes, in part, a body member with a number of members that extend therefrom and that impart a circular motion to the fluid as it enters the interior of the header.

In contrast, the cited reference merely provides guide ribs (50) that are integral to an upper plate face of a guide plate (46) and thus the guide ribs extend from the plate which is separately connected to the closure cap (24) as illustrated in Fig. 1 of the cited reference. Indeed, the Patent Office admits that a difference between the "[A]ppellants' design and that of the

reference is that the [A]ppellant has the vanes on the inside wall of the header, the reference has the vanes on a disc member attached to the header wall, and the vanes in the reference may be construed as facing in the opposite direction is that of the [A]ppellant.” See, Examiner’s Answer, p. 5. Thus, nowhere does the cited reference disclose a member for modifying fluid flow that is an integral part of the header (See, Claim 12) or that extends therefrom (See, Claim 1), let alone a member that includes a curved vane or channel (See, Claims 1, 6, 10, 11, 13, 16, 18, 19, 22, and 23), such as eight vanes or channels (See, Claims 3, 7 and 27) as further defined by the claimed invention. Clearly, these differences exist between what is claimed and what the cited art discloses as discussed above. Therefore, Appellants believe that the cited reference fails to anticipate the claimed invention based on at least these differences as discussed above.

Further, Appellants believe that the cited reference fails to suggest the claimed invention. Indeed, the primary focus of the cited reference relates to the use of a plate to purportedly create fluid flow in a radial and outward direction as it enters the dialyzer. Clearly, the plate is structurally different than the claimed member, such as curved vanes or channels including eight thereof that are integral to or extend from the dialyzer header as required by the claimed invention. Moreover, nowhere does the cited reference provide that the plate disclosed therein can impart a circular motion to the fluid as it enters the interior of the header as required by claim 21.

Again, the primary focus of the cited art is to direct fluid flow in a radial direction due to the obstruction of flow by the plate that extends to an outer periphery of the dialyzer. Indeed, the cited art merely suggests the use of flow-directing elements in combination with the plate, and not on their own, to direct flow. See, DE345883, English Language Translation, page 10. Moreover, the flow-directing elements merely impart a tangential flow component on the fluid (Id.), yet nowhere does the cited art suggest that the flow-directing elements when used in combination with the plate can impart a circular motion in contrast to the fluid modifying member as required by the claimed invention. Indeed, the cited art further provides that the flow-directing elements can serve as spacers to the inside of the surface, thus preventing the plate from resting against the end cap. Id. Therefore, Appellants believe that the cited reference provides a dialyzer and/or header thereof with both structural and functional features that are distinguishable from the fluid flow modifying features as claimed and discussed above.

Based on at least these reasons, Appellants believe that the cited reference on its own fails to suggest the claimed invention. Accordingly, Appellants respectfully submit that the anticipation rejection and alternative obviousness rejection of claims 1 and 3-28 are at odds with the law and facts.

IV. CONCLUSION

For the forgoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully once again request that the Board of Appeals reverse the rejection of claims 1 and 3-28 under 35 U.S.C. § 102, or in the alternative, under 35 U.S.C. § 103.

Respectfully submitted,

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